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A.B. 445

ASSEMBLY BILL NO. 445—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DEPARTMENT OF HUMAN RESOURCES,
HEALTH CARE FINANCING AND POLICY DIVISION)

MARCH 20, 2003

Referred to Committee on Health and Human Services

SUMMARY—Makes various changes related to Medicaid.
(BDR 38-482)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to welfare; transferring certain duties relating to Medicaid from the Welfare Division of the Department of Human Resources to the Department of Human Resources and from the State Welfare Administrator to the Director of the Department of Human Resources; revising the definition of the “undivided estate” of a deceased recipient of Medicaid; requiring the Director of the Department of Human Resources to adopt certain regulations; providing that certain provisions of law do not apply to the recovery of money owed to the Department of Human Resources as a result of the payment of benefits for Medicaid; repealing the requirement that the State Plan for Medicaid include a requirement that certain senior citizens are eligible for Medicaid for long-term care; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:



* A B 4 4 5 *

1 **Section 1.** Chapter 422 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 **The Director:**

4 1. *Shall administer the provisions of NRS 422.2935 to*
5 *422.2936, inclusive;*

6 2. *May adopt such regulations as are necessary for the*
7 *administration of those provisions; and*

8 3. *May invoke any legal, equitable or special procedures for*
9 *the enforcement of those provisions.*

10 **Sec. 2.** NRS 422.054 is hereby amended to read as follows:

11 422.054 “Undivided estate” means all real and personal
12 property and other assets included in the estate of a deceased
13 recipient of Medicaid and any other real and personal property and
14 other assets in or to which he had an interest or legal title
15 immediately before or at the time of his death, to the extent of that
16 interest or title. The term includes, without limitation, assets
17 conveyed to a survivor, heir or assign of the deceased recipient
18 through *or as the result of any* joint tenancy, tenancy in common,
19 survivorship, life estate, living trust , *annuity, declaration of*
20 *homestead* or other arrangement . ~~[, including, without limitation,~~
21 ~~any of the decedent’s separate property and his interest in~~
22 ~~community property that was transferred to a community spouse~~
23 ~~pursuant to NRS 123.259 or pursuant to an order of a district court~~
24 ~~under any other provision of law.]~~

25 **Sec. 3.** NRS 422.222 is hereby amended to read as follows:

26 422.222 The State Welfare Administrator may adopt such
27 regulations as are necessary for the administration of NRS 422.160
28 to 422.2345, inclusive, 422.2931 to ~~[422.2936,]~~ **422.29324,**
29 inclusive, and 422.310 to 422.3754, inclusive, and any program of
30 the Welfare Division.

31 **Sec. 4.** NRS 422.230 is hereby amended to read as follows:

32 422.230 The State Welfare Administrator shall:

33 1. Supply the Director with material on which to base proposed
34 legislation.

35 2. Cooperate with the Federal Government and state
36 governments for the more effective attainment of the purposes of
37 this chapter.

38 3. Coordinate the activities of the Welfare Division with other
39 agencies, both public and private, with related or similar activities.

40 4. Keep a complete and accurate record of all proceedings,
41 record and file all bonds and contracts, and assume responsibility for
42 the custody and preservation of all papers and documents pertaining
43 to his office.



1 5. Inform the public in regard to the activities and operation of
2 the Welfare Division, and provide other information which will
3 acquaint the public with problems relating to welfare.

4 6. Conduct studies into the causes of the social problems with
5 which the Welfare Division is concerned.

6 7. Provide leadership in the community in order that all welfare
7 activities are pointed toward the single goal of improving the public
8 welfare.

9 8. Invoke any legal, equitable or special procedures for the
10 enforcement of his orders or the enforcement of the provisions of
11 NRS 422.160 to 422.2345, inclusive, 422.2931 to ~~422.2936,~~
12 ~~422.29324,~~ inclusive, and 422.310 to 422.3754, inclusive.

13 9. Exercise any other powers that are necessary and proper for
14 the standardization of state work, to expedite business, to ensure fair
15 consideration of applications for aid, and to promote the efficiency
16 of the service provided by the Welfare Division.

17 **Sec. 5.** NRS 422.240 is hereby amended to read as follows:

18 422.240 1. Money to carry out the provisions of NRS
19 422.001 to 422.410, inclusive, *and section 1 of this act* and
20 422.580, including, without limitation, any federal money allotted to
21 the State of Nevada pursuant to the program to provide Temporary
22 Assistance for Needy Families and the Program for Child Care and
23 Development, must be provided by appropriation by the Legislature
24 from the State General Fund.

25 2. Disbursements for the purposes of NRS 422.001 to 422.410,
26 inclusive, *and section 1 of this act* and 422.580 must be made upon
27 claims duly filed, audited and allowed in the same manner as other
28 money in the State Treasury is disbursed.

29 **Sec. 6.** NRS 422.272 is hereby amended to read as follows:

30 422.272 1. ~~Except as otherwise provided in NRS 422.2725,~~
31 ~~the~~ *The* Director shall include in the State Plan for Medicaid a
32 requirement that the State shall pay the nonfederal share of
33 expenditures for the medical, administrative and transactional costs,
34 to the extent not covered by private insurance, of a person:

35 (a) Who is admitted to a hospital, facility for intermediate care
36 or facility for skilled nursing for not less than 30 consecutive days;

37 (b) Who is covered by the State Plan for Medicaid; and

38 (c) Whose net countable income per month is not more than
39 \$775 or 156 percent of the supplemental security income benefit
40 rate established pursuant to 42 U.S.C. § 1382(b)(1), whichever is
41 greater.

42 2. As used in this section:

43 (a) "Facility for intermediate care" has the meaning ascribed to
44 it in NRS 449.0038.



1 (b) "Facility for skilled nursing" has the meaning ascribed to it
2 in NRS 449.0039.

3 (c) "Hospital" has the meaning ascribed to it in NRS 449.012.

4 **Sec. 7.** NRS 422.291 is hereby amended to read as follows:

5 422.291 Assistance awarded pursuant to the provisions of this
6 chapter is not transferable or assignable at law or in equity and ,
7 *except as otherwise provided in section 17 of this act or NRS*
8 *108.850, 108.860, 108.870, or 422.2935 to 422.2936, inclusive,*
9 none of the money paid or payable under this chapter is subject to
10 execution, levy, attachment, garnishment or other legal process, or
11 to the operation of any bankruptcy or insolvency law.

12 **Sec. 8.** NRS 422.2931 is hereby amended to read as follows:

13 422.2931 The State Welfare Administrator and the Welfare
14 Division shall administer the provisions of NRS 422.160 to
15 422.2345, inclusive, 422.2931 to ~~422.2936,~~ **422.29324**, inclusive,
16 and 422.310 to 422.3754, inclusive, subject to administrative
17 supervision by the Director.

18 **Sec. 9.** NRS 422.2935 is hereby amended to read as follows:

19 422.2935 1. Except as otherwise provided in this section and
20 to the extent it is not prohibited by federal law and when
21 circumstances allow, the ~~{Welfare-Division}~~ **Department** shall
22 recover benefits correctly paid for Medicaid from:

23 (a) The undivided estate of the person who received those
24 benefits; and

25 (b) Any recipient of money or property from the undivided
26 estate of the person who received those benefits.

27 2. The ~~{Welfare-Division}~~ **Department** shall not recover
28 benefits pursuant to subsection 1, except from a person who is
29 neither a surviving spouse nor a child, until after the death of the
30 surviving spouse, if any, and only at a time when the person who
31 received the benefits has no surviving child who is under 21 years of
32 age, ~~{or is}~~ blind or ~~{permanently and totally}~~ disabled.

33 3. Except as otherwise provided by federal law, if a transfer of
34 real or personal property by a recipient of Medicaid is made for less
35 than fair market value, the ~~{Welfare-Division}~~ **Department** may
36 pursue any remedy available pursuant to chapter 112 of NRS with
37 respect to the transfer.

38 4. The amount of Medicaid paid to or on behalf of a person is a
39 claim against the estate in any probate proceeding only at a time
40 when there is no surviving spouse or surviving child who is under
41 21 years of age, ~~{or is}~~ blind or ~~{permanently and totally}~~ disabled.

42 5. The ~~{State-Welfare-Administrator}~~ **Director** may elect not to
43 file a claim against the estate of a recipient of Medicaid or his
44 spouse if ~~{he}~~ **the Director** determines that the filing of the claim
45 will cause an undue hardship for the spouse or other survivors of the



1 recipient. The ~~[State Welfare Administrator]~~ *Director* shall adopt
2 regulations defining the circumstances that constitute an undue
3 hardship.

4 6. Any recovery of money obtained pursuant to this section
5 must be applied first to the cost of recovering the money. Any
6 remaining money must be divided among the Federal Government,
7 the Department and the county in the proportion that the amount of
8 assistance each contributed to the recipient bears to the total amount
9 of the assistance contributed.

10 7. Any recovery by the ~~[Welfare Division]~~ *Department* from
11 the undivided estate of a recipient pursuant to this section must be
12 paid in cash to the extent of:

13 (a) The amount of Medicaid paid to or on behalf of the recipient
14 after October 1, 1993; or

15 (b) The value of the remaining assets in the undivided
16 estate,
17 whichever is less.

18 **Sec. 10.** NRS 422.29353 is hereby amended to read as
19 follows:

20 422.29353 1. Except as otherwise provided in this section,
21 the ~~[Welfare Division]~~ *Department* shall, to the extent that it is not
22 prohibited by federal law, recover from a recipient of public
23 assistance, the estate of the recipient, the undivided estate of a
24 recipient of Medicaid or a person who signed the application for
25 public assistance on behalf of the recipient an amount not to exceed
26 the amount of public assistance incorrectly paid to the recipient, if
27 the person who signed the application:

28 (a) Failed to report any required information to the ~~[Welfare~~
29 ~~Division]~~ *Department* that the person knew at the time he signed the
30 application; or

31 (b) Failed to report to the ~~[Welfare Division]~~ *Department* within
32 the period allowed by the ~~[Welfare Division]~~ *Department* any
33 required information that the person obtained after he filed the
34 application.

35 2. Except as otherwise provided in this section, a recipient of
36 incorrectly paid public assistance, the undivided estate of a recipient
37 of Medicaid or a person who signed the application for public
38 benefits on behalf of the recipient shall reimburse the ~~[Division]~~
39 *Department* or appropriate state agency for the value of the
40 incorrectly paid public assistance.

41 3. The ~~[State Welfare Administrator]~~ *Director* or his designee
42 may, to the extent that it is not prohibited by federal law, determine
43 the amount of, and settle, adjust, compromise or deny a claim
44 against a recipient of public assistance, the estate of the recipient,
45 the undivided estate of a recipient of Medicaid or a person who



1 signed the application for public assistance on behalf of the
2 recipient.

3 4. The ~~{State-Welfare-Administrator}~~ *Director* may, to the
4 extent that it is not prohibited by federal law, waive the repayment
5 of public assistance incorrectly paid to a recipient if the incorrect
6 payment was not the result of an intentional misrepresentation or
7 omission by the recipient and if repayment would cause an undue
8 hardship to the recipient. The ~~{State-Welfare-Administrator}~~
9 *Director* shall, by regulation, establish the terms and conditions of
10 such a waiver, including, without limitation, the circumstances that
11 constitute undue hardship.

12 **Sec. 11.** NRS 422.29355 is hereby amended to read as
13 follows:

14 422.29355 1. The ~~{Welfare-Division}~~ *Department* may, to
15 the extent not prohibited by federal law, petition for the imposition
16 of a lien pursuant to the provisions of NRS 108.850 against real or
17 personal property of a recipient of Medicaid as follows:

18 (a) The ~~{Welfare-Division}~~ *Department* may obtain a lien
19 against a recipient's property, both real or personal, before or after
20 his death in the amount of assistance paid or to be paid on his behalf
21 if the court determines that assistance was incorrectly paid for the
22 recipient.

23 (b) The ~~{Welfare-Division}~~ *Department* may seek a lien against
24 the real property of a recipient at any age before his death in the
25 amount of assistance paid or to be paid for him if he is an inpatient
26 in a nursing facility, intermediate care facility for the mentally
27 retarded or other medical institution and the ~~{Welfare-Division}~~
28 *Department* determines, after notice and opportunity for a hearing
29 in accordance with ~~{its}~~ *applicable* regulations, that ~~{he}~~ *the*
30 *recipient* cannot reasonably be expected to be discharged and return
31 home.

32 2. No lien may be placed on a recipient's home pursuant to
33 paragraph (b) of subsection 1 for assistance correctly paid if:

34 (a) His spouse;

35 (b) His child who is under 21 years of age , ~~{or}~~ blind or
36 ~~{permanently and totally}~~ disabled as determined in accordance with
37 42 U.S.C. § 1382c; or

38 (c) His brother or sister who is an owner or part owner of the
39 home and who was residing in the home for at least 1 year
40 immediately before the date the recipient was admitted to the
41 medical institution,
42 is lawfully residing in the home.

43 3. Upon the death of a recipient , the ~~{Welfare-Division}~~
44 *Department* may seek a lien upon ~~{his}~~ *the recipient's* undivided
45 estate as defined in NRS 422.054.



1 4. The ~~[State Welfare Administrator]~~ *Director* shall release a
2 lien pursuant to this section:

3 (a) Upon notice by the recipient or his representative to the
4 ~~[Administrator]~~ *Director* that the recipient has been discharged from
5 the medical institution and has returned home;

6 (b) If the lien was incorrectly determined; or

7 (c) Upon satisfaction of the claim of the ~~[Welfare Division]~~
8 *Department*.

9 **Sec. 12.** NRS 422.2936 is hereby amended to read as follows:
10 422.2936 Each application for Medicaid must include:

11 1. A statement that any assistance paid to a recipient may be
12 recovered in an action filed against the estate of the recipient or his
13 spouse; and

14 2. A statement that any person who signs an application for
15 Medicaid and fails to report:

16 (a) Any required information to the ~~[Welfare Division]~~
17 *Department* which he knew at the time he signed the application; or

18 (b) Within the period allowed by the ~~[Welfare Division]~~
19 *Department*, any required information to the ~~[Welfare Division]~~
20 *Department* which he obtained after he filed the application,
21 may be personally liable for any money incorrectly paid to the
22 recipient.

23 **Sec. 13.** NRS 40.525 is hereby amended to read as follows:

24 40.525 1. If title or an interest in real or personal property is
25 affected by the death of any person, any other person who claims
26 any interest in the real or personal property, if his interest is affected
27 by the death of that person, or the State of Nevada, may file in the
28 district court of any county in which any part of the real or personal
29 property is situated a verified petition setting forth those facts and
30 particularly describing the real or personal property, the interest of
31 the petitioner and the interest of the deceased therein.

32 2. The clerk shall set the petition for hearing by the court.
33 Notice of hearing of the petition must be mailed, by certified mail,
34 return receipt requested, postage prepaid, to the heirs at law of the
35 deceased person at their places of business or residences, if known,
36 and if not, by publication for at least 3 successive weeks in such
37 newspaper as the court orders. The clerk shall send a copy of the
38 notice of hearing or of the affidavit to the ~~[Welfare Division of the]~~
39 Department of Human Resources by certified mail, return receipt
40 requested, postage prepaid, if the State is not the petitioner, at the
41 time notice is mailed to the heirs at law or the notice is published.
42 Failure on the part of any such heir at law to contest the petition
43 precludes any such heir at law from thereafter contesting the validity
44 of the joint interest or its creation or termination.



1 3. The court shall take evidence for or against the petition, and
2 may render judgment thereon establishing the fact of the death and
3 the termination of the interest of the deceased in the real or personal
4 property described in the petition.

5 4. A certified copy of the decree may be recorded in the office
6 of the recorder of each county in which any part of the real or
7 personal property is situated.

8 5. As an alternative method of terminating the interest of the
9 deceased person, if title or an interest in real or personal property
10 held in joint tenancy or as community property with right of
11 survivorship is affected by the death of a joint tenant or spouse, any
12 person who has knowledge of the facts may record in the office of
13 the county recorder in the county where the property is situated an
14 affidavit meeting the requirements of NRS 111.365, accompanied
15 by a certified copy of the death certificate of the deceased person.

16 **Sec. 14.** NRS 108.860 is hereby amended to read as follows:

17 108.860 1. A petition for the imposition of a lien must be
18 signed by or on behalf of the ~~{State Welfare Administrator}~~ *Director*
19 *of the Department of Human Resources* or the Attorney General
20 and filed with the clerk of the court, who shall set the petition for
21 hearing.

22 2. Notice of a petition for the imposition of a lien must be
23 given by registered or certified mail, postage prepaid, at least 10
24 days before the date set for hearing or other action by the court.
25 Each such notice must be addressed to the intended recipient at his
26 last address known to the ~~{Administrator,}~~ *Director*, receipt for
27 delivery requested. The ~~{Administrator}~~ *Director* shall cause the
28 notice to be published, at least once a week for 3 successive weeks,
29 in one newspaper published in the county, and if there is no
30 newspaper published in the county, then in such mode as the court
31 may determine, notifying all persons claiming any interest in the
32 property of the filing of the petition, the object and the location, date
33 and time of the hearing.

34 3. Notice of a petition for the imposition of a lien must be
35 given to:

- 36 (a) Each person who has requested notice;
- 37 (b) The person who is receiving or has received benefits for
38 Medicaid;
- 39 (c) The legal guardian or representative of a person who is
40 receiving or has received benefits for Medicaid, if any;
- 41 (d) Each executor, administrator or trustee of the estate of a
42 decedent who received benefits for Medicaid, if any;
- 43 (e) The heirs of such a decedent known to the ~~{Administrator,}~~
44 *Director*; and



1 (f) Each person who is claiming any interest in the property or
2 who is listed as having any interest in the subject property,
3 and must state the filing of the petition, the object, and the time set
4 for hearing.

5 4. At the time appointed, or at any other time to which the
6 hearing may be continued, upon proof being made by affidavit or
7 otherwise to the satisfaction of the court that notice has been given
8 as required by this chapter, the court shall proceed to hear the
9 testimony in support of the petition. Each witness who appears and
10 is sworn shall testify orally.

11 5. The court shall make findings as to the appropriateness of
12 the lien and the amount of the lien.

13 6. At the time of the filing of the petition for imposition of a
14 lien, the ~~Administrator~~ *Director* shall file a notice of pendency of
15 the action in the manner provided in NRS 14.010.

16 7. Upon imposition of the lien by the court, the ~~Administrator~~
17 *Director* shall serve the notice of lien upon the owner by certified or
18 registered mail and file it with the office of the county recorder of
19 each county where real property subject to the lien is located.

20 8. The notice of lien must contain:

- 21 (a) The amount due;
- 22 (b) The name of the owner of record of the property; and
- 23 (c) A description of the property sufficient for identification.

24 9. If the amount due as stated in the notice of lien is reduced by
25 a payment, the ~~Administrator~~ *Director* shall amend the notice of
26 lien, stating the amount then due, within 20 days after receiving the
27 payment.

28 **Sec. 15.** NRS 108.870 is hereby amended to read as follows:
29 108.870 The ~~State Welfare Administrator~~ *Director of the*
30 *Department of Human Resources* may, to the extent not prohibited
31 by 42 U.S.C. § 1396p(b), foreclose upon a lien for money owed to
32 the Department of Human Resources as a result of the payment of
33 benefits for Medicaid by action in the district court in the same
34 manner as for foreclosure of any other lien.

35 **Sec. 16.** NRS 111.365 is hereby amended to read as follows:
36 111.365 1. In the case of real property owned by two or more
37 persons as joint tenants or as community property with right of
38 survivorship, it is presumed that all title or interest in and to that real
39 property of each of one or more deceased joint tenants or the
40 deceased spouse has terminated, and vested solely in the surviving
41 joint tenant or spouse or vested jointly in the surviving joint tenants,
42 if there has been recorded in the office of the recorder of the county
43 or counties in which the real property is situate an affidavit,
44 subscribed and sworn to by a person who has knowledge of the facts
45 required in this subsection, which sets forth the following:



1 (a) The family relationship, if any, of the affiant to each
2 deceased joint tenant or the deceased spouse;

3 (b) A description of the instrument or conveyance by which the
4 joint tenancy or right of survivorship was created;

5 (c) A description of the property subject to the joint tenancy or
6 right of survivorship; and

7 (d) The date and place of death of each deceased joint tenant or
8 the deceased spouse.

9 2. Each month, a county recorder shall send all the information
10 contained in each affidavit received by him pursuant to subsection 1
11 during the immediately preceding month to the ~~[Welfare Division of~~
12 ~~the]~~ Department of Human Resources in any format and by any
13 medium approved by the ~~[Welfare Division.]~~ *Department.*

14 **Sec. 17.** Chapter 115 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 *Nothing in this chapter exempts any real or personal property*
17 *from any statute of this state that authorizes the recovery of money*
18 *owed to the Department of Human Resources as a result of the*
19 *payment of benefits from Medicaid through the imposition or*
20 *foreclosure of a lien against the property of a recipient of*
21 *Medicaid in the manner set forth in NRS 422.2935 to 422.2936,*
22 *inclusive.*

23 **Sec. 18.** NRS 115.005 is hereby amended to read as follows:

24 115.005 As used in this chapter, unless the context otherwise
25 requires:

26 1. "Equity" means the amount that is determined by subtracting
27 from the fair market value of the property ~~[]~~ the value of any liens
28 excepted from the homestead exemption pursuant to subsection 3 of
29 NRS 115.010 ~~[]~~ *or section 17 of this act.*

30 2. "Homestead" means the property consisting of:

31 (a) A quantity of land, together with the dwelling house thereon
32 and its appurtenances;

33 (b) A mobile home whether or not the underlying land is owned
34 by the claimant; or

35 (c) A unit, whether real or personal property, existing pursuant
36 to chapter 116 or 117 of NRS, with any appurtenant limited
37 common elements and its interest in the common elements of the
38 common-interest community,
39 to be selected by the husband and wife, or either of them, or a single
40 person claiming the homestead.

41 **Sec. 19.** NRS 115.010 is hereby amended to read as follows:

42 115.010 1. The homestead is not subject to forced sale on
43 execution or any final process from any court, except as otherwise
44 provided by subsections 2, 3 and 5 ~~[]~~, *and section 17 of this act.*



1 2. The exemption provided in subsection 1 extends only to that
2 amount of equity in the property held by the claimant which does
3 not exceed \$125,000 in value, unless allodial title has been
4 established and not relinquished, in which case the exemption
5 provided in subsection 1 extends to all equity in the dwelling, its
6 appurtenances and the land on which it is located.

7 3. Except as otherwise provided in subsection 4, the exemption
8 provided in subsection 1 does not extend to process to enforce the
9 payment of obligations contracted for the purchase of the property,
10 or for improvements made thereon, including any mechanic's lien
11 lawfully obtained, or for legal taxes, or for:

12 (a) Any mortgage or deed of trust thereon executed and given;
13 or

14 (b) Any lien to which prior consent has been given through the
15 acceptance of property subject to any recorded declaration of
16 restrictions, deed restriction, restrictive covenant or equitable
17 servitude, specifically including any lien in favor of an association
18 pursuant to NRS 116.3116 or 117.070,
19 by both husband and wife, when that relation exists.

20 4. If allodial title has been established and not relinquished, the
21 exemption provided in subsection 1 extends to process to enforce
22 the payment of obligations contracted for the purchase of the
23 property, and for improvements made thereon, including any
24 mechanic's lien lawfully obtained, and for legal taxes levied by a
25 state or local government, and for:

26 (a) Any mortgage or deed of trust thereon; and

27 (b) Any lien even if prior consent has been given through the
28 acceptance of property subject to any recorded declaration of
29 restrictions, deed restriction, restrictive covenant or equitable
30 servitude, specifically including any lien in favor of an association
31 pursuant to NRS 116.3116 or 117.070,
32 unless a waiver for the specific obligation to which the judgment
33 relates has been executed by all allodial titleholders of the property.

34 5. Establishment of allodial title does not exempt the property
35 from forfeiture pursuant to NRS 179.1156 to 179.119, inclusive, or
36 207.350 to 207.520, inclusive.

37 6. Any declaration of homestead which has been filed before
38 October 1, 1995, shall be deemed to have been amended on that date
39 by extending the homestead exemption commensurate with any
40 increase in the amount of equity held by the claimant in the property
41 selected and claimed for the exemption up to the amount permitted
42 by law on that date, but the increase does not impair the right of any
43 creditor to execute upon the property when that right existed before
44 October 1, 1995.



1 **Sec. 20.** NRS 136.100 is hereby amended to read as follows:
2 136.100 1. A petition for the probate of a will and for the
3 issuance of letters must be signed by the party petitioning, or the
4 attorney for the petitioner, and filed with the clerk of the court, who
5 shall set the petition for hearing.

6 2. The petitioner shall give notice of the hearing for the period
7 and in the manner provided in NRS 155.020 to the heirs of the
8 testator and the devisees named in the will, to all persons named as
9 personal representatives who are not petitioning and to the
10 ~~[Administrator of the Welfare Division]~~ *Director* of the Department
11 of Human Resources. The notice must be substantially in the form
12 provided in that section.

13 **Sec. 21.** NRS 139.100 is hereby amended to read as follows:
14 139.100 The clerk shall set the petition for hearing, and notice
15 must be given to the heirs of the decedent and to the ~~[Administrator~~
16 ~~of the Welfare Division]~~ *Director* of the Department of Human
17 Resources as provided in NRS 155.020. The notice must state the
18 filing of the petition, the object and the time for hearing.

19 **Sec. 22.** NRS 143.035 is hereby amended to read as follows:
20 143.035 1. A personal representative shall use reasonable
21 diligence in performing the duties of the personal representative and
22 in pursuing the administration of the estate.

23 2. A personal representative in charge of an estate that has not
24 been closed shall:

25 (a) Within 6 months after the personal representative's
26 appointment, where no federal estate tax return is required to be
27 filed for the estate; or

28 (b) Within 15 months after the personal representative's
29 appointment, where a federal estate tax return is required to be filed
30 for the estate,
31 file with the court a report explaining why the estate has not been
32 closed.

33 3. Upon receiving the report, the clerk shall set a time and
34 place for a hearing of the report. The personal representative shall
35 send a copy of the report and shall give notice of the hearing, for the
36 period and in the manner provided in NRS 155.010, to:

37 (a) Each person whose interest is affected as an heir or devisee;
38 and

39 (b) The ~~[Welfare Division of the]~~ Department of Human
40 Resources, if the ~~[Welfare Division]~~ *Department* has filed a claim
41 against the estate.

42 4. At the hearing, the court shall determine whether or not the
43 personal representative has used reasonable diligence in the
44 administration of the estate, and if the personal representative has
45 not, the court may:



- 1 (a) Subject to the provisions of NRS 143.037:
- 2 (1) Prescribe the time within which the estate must be closed;
- 3 or
- 4 (2) Allow the personal representative additional time for
- 5 closing and order a subsequent report; or
- 6 (b) Revoke the letters of the personal representative, appoint a
- 7 successor and prescribe a reasonable time within which the
- 8 successor shall close the estate.

9 **Sec. 23.** NRS 145.060 is hereby amended to read as follows:

10 145.060 1. A personal representative shall publish and mail
11 notice to creditors in the manner provided in NRS 155.020.

12 2. Creditors of the estate must file their claims, due or to
13 become due, with the clerk, within 60 days after the mailing to the
14 creditors for those required to be mailed, or 60 days after the first
15 publication of the notice to creditors pursuant to NRS 155.020, and
16 within 10 days thereafter the personal representative shall allow or
17 reject the claims filed.

18 3. Any claim which is not filed within the 60 days is barred
19 forever, except that if it is made to appear, by the affidavit of the
20 claimant or by other proof to the satisfaction of the court, that the
21 claimant did not have notice as provided in NRS 155.020, the claim
22 may be filed at any time before the filing of the final account.

23 4. Every claim which is filed as provided in this section and
24 allowed by the personal representative ~~is~~ must then, and not until
25 then, be ranked as an acknowledged debt of the estate and be paid in
26 the course of administration, except that payment of small debts in
27 advance may be made pursuant to subsection 3 of NRS 150.230.

28 5. If a claim filed by the ~~[Welfare Division of the]~~ Department
29 of Human Resources is rejected by the personal representative, the
30 ~~[State Welfare Administrator]~~ *Director of the Department* may,
31 within 20 days after receipt of the written notice of rejection,
32 petition the court for summary determination of the claim. A
33 petition for summary determination must be filed with the clerk,
34 who shall set the petition for hearing, and the petitioner shall give
35 notice for the period and in the manner required by NRS 155.010.
36 Allowance of the claim by the court is sufficient evidence of its
37 correctness, and it must be paid as if previously allowed by the
38 personal representative.

39 **Sec. 24.** NRS 146.070 is hereby amended to read as follows:

40 146.070 1. If a person dies leaving an estate the gross value
41 of which, after deducting any encumbrances, does not exceed
42 \$50,000, and there is a surviving spouse or minor child or minor
43 children of the decedent, the estate must not be administered upon,
44 but the whole estate, after directing such payments as may be
45 deemed just, must be, by an order for that purpose, assigned and set



1 apart for the support of the surviving spouse or minor child or minor
2 children, or for the support of the minor child or minor children, if
3 there is no surviving spouse. Even if there is a surviving spouse, the
4 court may, after directing such payments, set aside the whole of the
5 estate to the minor child or minor children, if it is in their best
6 interests.

7 2. If there is no surviving spouse or minor child of the decedent
8 and the gross value of a decedent's estate, after deducting any
9 encumbrances, does not exceed \$50,000, upon good cause shown,
10 the court shall order that the estate not be administered upon, but the
11 whole estate be assigned and set apart in the following order:

12 (a) To the payment of funeral expenses, expenses of last illness,
13 money owed to the Department of Human Resources as a result of
14 payment of benefits for Medicaid and creditors, if there are any; and

15 (b) Any balance remaining to the claimant or claimants entitled
16 thereto pursuant to a valid will of the decedent, and if there is no
17 valid will, pursuant to intestate succession.

18 3. Proceedings taken under this section, whether or not the
19 decedent left a valid will, must not begin until at least 30 days after
20 the death of the decedent and must be originated by a petition
21 containing:

22 (a) A specific description of all the decedent's property.

23 (b) A list of all the liens and mortgages of record at the date of
24 the decedent's death.

25 (c) An estimate of the value of the property.

26 (d) A statement of the debts of the decedent so far as known to
27 the petitioner.

28 (e) The names and residences of the heirs and devisees of the
29 decedent and the age of any who is a minor and the relationship of
30 the heirs and devisees to the decedent, so far as known to the
31 petitioner.

32 4. The clerk shall set the petition for hearing and the petitioner
33 shall give notice of the petition and hearing in the manner provided
34 in NRS 155.010 to the decedent's heirs and devisees and to the
35 ~~State Welfare Administrator.]~~ *Director of the Department of*
36 *Human Resources.* If a complete copy of the petition is not
37 enclosed with the notice, the notice must include a statement setting
38 forth to whom the estate is being set aside.

39 5. No court or clerk's fees may be charged for the filing of any
40 petition in, or order of court thereon, or for any certified copy of the
41 petition or order in an estate not exceeding \$2,500 in value.

42 6. If the court finds that the gross value of the estate, less
43 encumbrances, does not exceed the sum of \$50,000, the court may
44 direct that the estate be distributed to the father or mother of a minor
45 heir or devisee, with or without the filing of any bond, or to a



1 custodian under chapter 167 of NRS, or may require that a general
2 guardian be appointed and that the estate be distributed to the
3 guardian, with or without bond, as in the discretion of the court is
4 deemed to be in the best interests of the minor. The court may direct
5 the manner in which the money may be used for the benefit of the
6 minor.

7 **Sec. 25.** NRS 146.080 is hereby amended to read as follows:

8 146.080 1. If a decedent leaves no real property, nor interest
9 therein, nor mortgage or lien thereon, in this state, and the gross
10 value of the decedent's property in this state, over and above any
11 amounts due to the decedent for services in the Armed Forces of the
12 United States, does not exceed \$20,000, a person who has a right to
13 succeed to the property of the decedent pursuant to the laws of
14 succession for a decedent who died intestate or pursuant to the valid
15 will of a decedent who died testate, on behalf of all persons entitled
16 to succeed to the property claimed, or the ~~{State-Welfare~~
17 ~~Administrator}~~ *Director of the Department of Human Resources* or
18 public administrator on behalf of the State or others entitled to the
19 property, may, 40 days after the death of the decedent, without
20 procuring letters of administration or awaiting the probate of the
21 will, collect any money due the decedent, receive the property of the
22 decedent, and have any evidences of interest, indebtedness or right
23 transferred to the claimant upon furnishing the person,
24 representative, corporation, officer or body owing the money,
25 having custody of the property or acting as registrar or transfer agent
26 of the evidences of interest, indebtedness or right, with an affidavit
27 showing the right of the affiant or affiants to receive the money or
28 property or to have the evidence transferred.

29 2. An affidavit made pursuant to this section must state:

- 30 (a) The affiant's name and address, and that the affiant is
31 entitled by law to succeed to the property claimed;
32 (b) The date and place of death of the decedent;
33 (c) That the gross value of the decedent's property in this state,
34 except amounts due to the decedent for services in the Armed
35 Forces of the United States, does not exceed \$20,000, and that the
36 property does not include any real property nor interest therein, nor
37 mortgage or lien thereon;
38 (d) That at least 40 days have elapsed since the death of the
39 decedent, as shown in a certified copy of the certificate of death of
40 the decedent attached to the affidavit;
41 (e) That no petition for the appointment of a personal
42 representative is pending or has been granted in any jurisdiction;
43 (f) That all debts of the decedent, including funeral and burial
44 expenses, and money owed to the Department of Human Resources



1 as a result of the payment of benefits for Medicaid, have been paid
2 or provided for;

3 (g) A description of the personal property and the portion
4 claimed;

5 (h) That the affiant has given written notice, by personal service
6 or by certified mail, identifying the affiant's claim and describing
7 the property claimed, to every person whose right to succeed to the
8 decedent's property is equal or superior to that of the affiant, and
9 that at least 14 days have elapsed since the notice was served or
10 mailed;

11 (i) That the affiant is personally entitled, or the Department of
12 Human Resources is entitled, to full payment or delivery of the
13 property claimed or is entitled to payment or delivery on behalf of
14 and with the written authority of all other successors who have an
15 interest in the property; and

16 (j) That the affiant acknowledges an understanding that filing a
17 false affidavit constitutes a felony in this state.

18 3. If the affiant:

19 (a) Submits an affidavit which does not meet the requirements
20 of subsection 2 or which contains statements which are not entirely
21 true, any money or property the affiant receives is subject to all
22 debts of the decedent.

23 (b) Fails to give notice to other successors as required by
24 subsection 2, any money or property the affiant receives is held by
25 the affiant in trust for all other successors who have an interest in
26 the property.

27 4. A person who receives an affidavit containing the
28 information required by subsection 2 is entitled to rely upon that
29 information, and if the person relies in good faith, the person is
30 immune from civil liability for actions based on that reliance.

31 5. Upon receiving proof of the death of the decedent and an
32 affidavit containing the information required by this section:

33 (a) A transfer agent of any security shall change the registered
34 ownership of the security claimed from the decedent to the person
35 claiming to succeed to ownership of that security.

36 (b) A governmental agency required to issue certificates of
37 ownership or registration to personal property shall issue a new
38 certificate of ownership or registration to the person claiming to
39 succeed to ownership of the property.

40 6. If any property of the estate not exceeding \$20,000 is
41 located in a state which requires an order of a court for the transfer
42 of the property, or if the estate consists of stocks or bonds which
43 must be transferred by an agent outside this state, any person
44 qualified pursuant to the provisions of subsection 1 to have the
45 stocks or bonds or other property transferred may do so by obtaining



1 a court order directing the transfer. The person desiring the transfer
2 must file a petition, which may be ex parte, containing:
3 (a) A specific description of all the property of the decedent.
4 (b) A list of all the liens and mortgages of record at the date of
5 the decedent's death.
6 (c) An estimate of the value of the property of the decedent.
7 (d) The names, ages of any minors, and residences of the
8 decedent's heirs and devisees.
9 (e) A request for the court to issue an order directing the transfer
10 of the stocks or bonds or other property if the court finds the gross
11 value of the estate does not exceed \$20,000.
12 (f) An attached copy of the executed affidavit made pursuant to
13 subsection 2.
14 If the court finds that the gross value of the estate does not exceed
15 \$20,000 and the person requesting the transfer is entitled to it, the
16 court may enter an order directing the transfer.
17 **Sec. 26.** NRS 147.070 is hereby amended to read as follows:
18 147.070 1. A claim for an amount of \$250 or more filed with
19 the clerk must be supported by the affidavit of the claimant that:
20 (a) The amount is justly due (or if the claim is not yet due, that
21 the amount is a just demand and will be due on the day of).
22 (b) No payments have been made thereon which are not
23 credited.
24 (c) There are no offsets to the amount demanded to the
25 knowledge of the claimant or other affiant.
26 2. Every claim filed with the clerk must contain the mailing
27 address of the claimant. Any written notice mailed by a personal
28 representative to the claimant at the address furnished is proper
29 notice.
30 3. When the affidavit is made by any other person than the
31 claimant, the reasons why it is not made by the claimant must be set
32 forth in the affidavit.
33 4. The oath may be taken before any person authorized to
34 administer oaths.
35 5. The amount of interest must be computed and included in
36 the statement of the claim and the rate of interest determined.
37 6. Except as otherwise provided in subsection 7, the court may,
38 for good cause shown, allow a defective claim or affidavit to be
39 corrected or amended on application made at any time before the
40 filing of the final account, but an amendment may not be made to
41 increase the amount of a claim after the time for filing a claim has
42 expired.
43 7. The court shall allow the ~~Welfare Division of the~~
44 Department of Human Resources to amend at any time before the
45 filing of the final account a claim for the payment of benefits for



1 Medicaid that the ~~[Division]~~ *Department* identifies after the original
2 claim has been filed.

3 **Sec. 27.** NRS 147.130 is hereby amended to read as follows:

4 147.130 1. If a claim is rejected by the personal
5 representative or the court, in whole or in part, the claimant must be
6 immediately notified by the personal representative, and the
7 claimant must bring suit in the proper court against the personal
8 representative within 60 days after the notice or file a timely petition
9 for summary determination pursuant to subsection 2, whether the
10 claim is due or not, or the claim is forever barred. A claimant must
11 be informed of the rejection of the claim by written notice
12 forwarded to the claimant's mailing address by registered or
13 certified mail.

14 2. If a claim filed by the ~~[Welfare Division of the]~~ Department
15 of Human Resources is rejected by the personal representative, the
16 ~~[State Welfare Administrator]~~ *Director of the Department* may,
17 within 20 days after receipt of the written notice of rejection,
18 petition the court for summary determination of the claim. A
19 petition for summary determination must be filed with the clerk,
20 who shall set the petition for hearing, and notice must be given for
21 the period and in the manner required by NRS 155.010. Allowance
22 of the claim by the court is sufficient evidence of its correctness, and
23 it must be paid as if previously allowed by the personal
24 representative.

25 3. In any action brought upon a claim rejected in whole or in
26 part by the personal representative, if he resides out of the State or
27 has departed from the State, or cannot, after due diligence, be found
28 within the State, or conceals himself to avoid the service of
29 summons, the summons, together with a copy of the complaint,
30 must be mailed directly to the last address given by him, with a copy
31 to the attorney for the estate, and proof of the mailing must be filed
32 with the clerk where the administration of the estate is pending. This
33 service is the equivalent of personal service upon the personal
34 representative, but he has 30 days from the date of service within
35 which to answer.

36 4. If the personal representative defaults after such service, the
37 default is sufficient grounds for his removal as personal
38 representative by the court without notice. Upon petition and notice,
39 in the manner provided for an application for letters of
40 administration, an administrator or an administrator with the will
41 annexed must be appointed by the court and, upon his qualification
42 as such, letters of administration or letters of administration with the
43 will annexed must be issued.



1 **Sec. 28.** NRS 155.020 is hereby amended to read as follows:
2 155.020 1. Notice of a petition for the probate of a will and
3 the issuance of letters and the notice to creditors must be given to:

4 (a) The persons respectively entitled thereto, including the ~~State~~
5 ~~Welfare Administrator,~~ *Director of the Department of Human*
6 *Resources*, as provided in NRS 155.010; and

7 (b) The public, including creditors whose names and addresses
8 are not readily ascertainable, by publication on three dates of
9 publication before the hearing, and if the newspaper is published
10 more than once each week, there must be at least 10 days from the
11 first to last dates of publication, including both the first and last
12 days.

13 2. Every publication required by this section must be made in a
14 newspaper published in the county where the proceedings are
15 pending, but if there is not such a newspaper, then in one having
16 general circulation in that county.

17 3. The notice of the hearing upon the petition to administer the
18 estate must be in substantially the following form:

19
20 NOTICE OF THE HEARING UPON THE PETITION TO
21 ADMINISTER THE ESTATE
22

23 Notice is hereby given that has filed in this
24 court a petition for the probate of a will and for letters testamentary,
25 or for letters of administration, of the estate of,
26 deceased, and a hearing has been set for the day of the month
27 of....., of the year....., at (a.m. or p.m.) at the
28 courthouse of the above-entitled court. All persons interested in the
29 estate are notified to appear and show cause why the petition should
30 not be granted.

31 Dated

32
33 4. As soon as practicable after appointment, a personal
34 representative shall, in addition to publishing the notice to creditors,
35 mail a copy of the notice to those creditors whose names and
36 addresses are readily ascertainable as of the date of first publication
37 of the notice and who have not already filed a claim. The notice
38 must be in substantially the following form:

39
40 NOTICE TO CREDITORS
41

42 Notice is hereby given that the undersigned has been appointed
43 and qualified by the (giving the title of the court and the date of
44 appointment) as personal representative of the estate of
45, deceased. All creditors having claims against



1 the estate are required to file the claims with the clerk of the court
2 within (60 or 90) days after the mailing or the first
3 publication (as the case may be) of this notice.

4 Dated

5
6 5. If before the last day for the filing of a creditor's claim under
7 NRS 147.040, the personal representative discovers the existence of
8 a creditor who was not readily ascertainable at the time of first
9 publication of the notice to creditors, the personal representative
10 shall immediately mail a copy of the notice to the creditor.

11 **Sec. 29.** NRS 164.025 is hereby amended to read as follows:

12 164.025 1. The trustee of a nontestamentary trust may after
13 the death of the settlor of the trust cause to be published a notice in
14 the manner specified in paragraph (b) of subsection 1 of NRS
15 155.020 and mail a copy of the notice to known or readily
16 ascertainable creditors.

17 2. The notice must be in substantially the following form:

18
19 NOTICE TO CREDITORS
20

21 Notice is hereby given that the undersigned is the duly appointed
22 and qualified trustee of the trust., the settlor of
23 that trust died on A creditor having a claim against the
24 trust estate must file his claim with the undersigned at the address
25 given below within 90 days after the first publication of this notice.

26
27 Dated

28
29
30 Trustee
31
32 Address
33

34 3. A person having a claim, due or to become due, against a
35 settlor or the trust must file the claim with the trustee within 90 days
36 after the mailing, for those required to be mailed, or 90 days after
37 publication of the first notice to creditors. Any claim against the
38 trust estate not filed within that time is forever barred. After
39 the expiration of the time, the trustee may distribute the assets of the
40 trust to its beneficiaries without personal liability to any creditor
41 who has failed to file a claim with the trustee.

42 4. If the trustee knows or has reason to believe that the settlor
43 received public assistance during his lifetime, the trustee shall,
44 whether or not he gives notice to other creditors, give notice within
45 30 days after the death to the ~~Welfare Division of the~~ Department



1 of Human Resources in the manner provided in NRS 155.010. If
2 notice to the ~~[Welfare Division]~~ *Department* is required by this
3 subsection but is not given, the trust estate and any assets transferred
4 to a beneficiary remain subject to the right of the ~~[Welfare Division]~~
5 *Department* to recover public assistance received.

6 5. If a claim is rejected by the trustee, in whole or in part, the
7 trustee must, within 10 days ~~[of]~~ *after* the rejection, notify the
8 claimant of the rejection by written notice forwarded by registered
9 or certified mail to the mailing address of the claimant. The claimant
10 must bring suit in the proper court against the trustee within 60 days
11 after the notice is given, whether the claim is due or not, or the
12 claim is barred forever and the trustee may distribute the assets of
13 the trust to its beneficiaries without personal liability to any creditor
14 whose claim is barred forever.

15 **Sec. 30.** NRS 422.2725 is hereby repealed.

16 **Sec. 31.** Notwithstanding the provisions of sections 1, 3, 9 and
17 10 of this act that transfer the authority to adopt certain regulations
18 from the State Welfare Administrator to the Director of the
19 Department of Human Resources, any regulations adopted by the
20 State Welfare Administrator pursuant to sections 3, 9 or 10 of this
21 act before July 1, 2003, remain in effect and may be enforced by the
22 Director of the Department of Human Resources until the Director
23 adopts regulations to replace those regulations of the State Welfare
24 Administrator.

25 **Sec. 32.** 1. This section and section 30 of this act become
26 effective upon passage and approval.

27 2. Sections 1 to 29, inclusive, and 31 of this act become
28 effective on July 1, 2003.

TEXT OF REPEALED SECTION

**422.2725 State Plan for Medicaid: Inclusion of requirement
that certain senior citizens are eligible for Medicaid for long-
term care.**

1. The Director shall include in the State Plan for Medicaid a
requirement that any senior citizen who purchases and receives
benefits for at least 3 years pursuant to a policy of health insurance
for long-term care that is approved by the Director and whose
annual household income is less than \$200,000 is eligible for
Medicaid for long-term care.

2. As used in this section:



(a) "Household income" has the meaning ascribed to it in NRS 427A.480.

(b) "Senior citizen" means a person who is domiciled in this state and is 55 years of age or older.

③

